

REMARKS

Favorable reconsideration of this application in light of the following discussion is respectfully requested.

Claims 1-22 are presently active in this case. None of the claims are herewith amended.

In the outstanding Office Action, Claims 1-22 were rejected under 35 U.S.C. §103(a) as unpatentable over Downs et al. (U.S. Patent No. 6,226,618, herein "Downs") in view of Zhao et al. (Sigmetrics publication of 5/99 entitled "Bandwidth-Efficient Continuous Media Streaming Through Optimal Multiplexing," herein "Zhao").

In response to the rejection of Claims 1-22 under 35 U.S.C. §103(a), Applicants respectfully traverse the rejection and request reconsideration of the rejection, as next discussed.

Briefly recapitulating, Claim 1 relates to a method for ordering and transmitting digital media objects, including: transmitting an object order for digital media objects that includes at least one object identification by a mobile communications terminal over a mobile radio network to a center, transmitting data on a time at which an ordered media object is available by the center to the communications terminal, *wherein the time is determined by the center with regards to optimal usage of resources used for a transmission of ordered media objects* and is stored in the communications terminal, *automatically contacting, by the communications terminal, the center at the time*, transmitting a media object assigned to the object identification by the center via a radio network to the communications terminal, where the media object is stored in a memory, and playing back, by a media playback module of the communications terminal, a media content contained in the stored media object. Independent Claim 13 recites similar features in the context of a mobile communications terminal

configured to receive data disseminated over a radio network and configured to communicate over a mobile radio network.

As explained in Applicants' Specification from page 1, line 27, to page 2, line 14, Claim 1 improves upon background methods for ordering and transmitting digital media objects since media objects are transmitted at times selected by the center such that transmission resources are optimally used.¹ The automatic contacting of the center by the communications terminal presents the advantage that media objects are transmitted only when the communications terminal is ready and/or available. Accordingly, there is no waste of network bandwidth for transmitting media objects to a communications terminal that is not ready for reception of the media objects. In addition, there is also no waste of storage resources in the network that are associated with store and forward services required for storing media objects, when the communications terminal is not available.

Applicants respectfully submit that both references used by the outstanding Office Action to form the 35 U.S.C. §103(a) rejection, Downs and Zhao, fail to teach or suggest that the time of transmitting data is determined by the center with regards to optimal usage of resources used for a transmission of ordered media objects, and also fail to teach or suggest that the communications terminal automatically contacts the center at the time.

The reference Downs describes an automatic metadata acquisition process allowing the retrieval of as much data as possible from the content provider including Digital Rights Management (DRM), without operator assistance.² Downs' automatic metadata acquisition process thereby retrieves exclusively metadata describing the content, e.g. title, artist, author, composer, producer, or length of recording.³ The outstanding Office Action asserts that Downs teaches that the communications terminal automatically contacts the center at the

¹ See Applicants' Specification at page 10, lines 12-15.

² See Downs at column 58, lines 24-29.

³ See Downs at column 57, lines 60-63.

stored time. Applicants respectfully disagree, since Downs merely describes that a work flow manager 154, located at the content provider 101, is responsible for scheduling content processing activities.⁴ Accordingly, a work flow manager queuing new jobs at the content provider 101, as taught by Downs, *is not* a communications terminal automatically contacting the center at a determined time, as recited in Applicants' Claim 1. Since Claim 1 also recites that the communications terminal plays back the media content, it is not possible that the work flow manager of Downs reads on Applicants' communications terminal.

Furthermore, and as confirmed by the Office Action,⁵ Downs *does not disclose* transmission of media objects at a time for optimal usage of resources. Downs' content provider 101 starts delivering metadata information to an end-user as soon as the end-user purchases a product.⁶

Accordingly, Downs clearly fails to teach or suggest that a time of transmitting data is determined by the center with regards to optimal usage of resources used for a transmission of ordered media objects, and also fail to teach or suggest that the communications terminal automatically contacts the center at the time.

Applicants respectfully submit that Zhao, the secondary reference used by the outstanding Office Action to form the 35 U.S.C. §103(a) rejection, does not remedy the deficiencies of Downs, as next discussed.

Zhao teaches bandwidth-efficient continuous media streaming.⁷ Zhao further explains that continuous media are streamed from a media server to a set of distributed receivers.⁸ In Zhao, the server determines a streaming schedule for immediate delivery of a requested media object by the server to a receiver through a continuous streaming process according to

⁴ See Downs from column 49, line 12 to column 50, line 32 and in Figure 1A.

⁵ See the outstanding Office Action at page 3, lines 12-13.

⁶ See Downs at column 58, lines 5-9.

⁷ See Zhao in the Title and in the Abstract.

⁸ See Zhao at page 13, column 2, lines 32-35 and in Figures 1 and 2.

the streaming schedule.⁹ Accordingly, streaming data with a streaming schedule determined by a server, having a piecewise-linear adaption of the transmission rate and starting at time $t=0$,¹⁰ as taught by Zhao, *is not* transmitting data on a time determined by the center with regards to optimal usage of resources used for a transmission of ordered media objects, as recited in Applicants' Claim 1.

Since Zhao's time of initiating streaming is always $t = 0$, the streaming is intended to start immediately after request. Zhao's schedule is thereby intended to adapt the bit rate in function of time, as shown in Zhao's Figures 5a and 5b. Therefore, Zhao's media streaming through optimal multiplexing does not teach or suggest determining a time at which an ordered media object is available. Accordingly, Zhao also *fails to teach or suggest* the automatically contacting the center by the communications terminal at the determined time.

Furthermore, Zhao even confirms that his teachings teach away from the features Applicants' Claim 1, by explicitly stating "[w]e use the term *streaming* to distinguish itself from the alternate approach of downloading and playing back."¹¹ Accordingly, "[a] reference may be said to teach away when a person of ordinary skill in the art, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant." In re Gurley, 31 USPQ2d 1130, 1131 (Fed. Cir. 1994). To this end, "disclosures in the references that diverge from and teach away from the invention cannot be disregarded", Phillips Petroleum Company v. U.S. Steel Corp., 9 U.S.P.Q.2d 1461 (Fed. Cir. 1989).

The outstanding Office Action asserts that the language of Applicants' claims does not make a distinction between streaming media objects and the features in Applicants'

⁹ See Zhao at page 15, column 2, paragraph 2.3

¹⁰ See Zhao at page 15, column 2, lines 10-15 and in Figures 5a-b.

¹¹ See Zhao at page 14, column 2, lines 12-17.

Claim 1.¹² Applicants respectfully disagree with such assertion, as next explained. Claim 1 clearly recites “transmitting a media object ... to the communications terminal, where the media object is stored in a memory,” and further recites “playing back ... a media content included in the stored media object.” In other words, first a media object is stored, and subsequently, the media content of the media object is played back. In contrast, the definition of the word streaming, as known to one of ordinary skilled in the art, is:

Streaming:

Playing sound or video in real time as it is downloaded over the Internet *as opposed to storing it in a local file first*. A plug-in to a web browser such as Netscape Navigator decompresses and plays the data as it is transferred to your computer over the World-Wide Web. Streaming audio or video avoids the delay entailed in downloading an entire file and then playing it with a helper application.¹³ (Emphasis added.)

Since it is clear from the features of Applicants’ Claim 1 that the media object is first stored in the memory, and then the media content of the media object is played back, Applicants’ Claim 1 is clearly not directed to streaming media content, and it is further believed that the reference Zhao clearly teaches away from such a feature, as explained above.

In addition, the outstanding Office Action is the opinion that “[t]he main feature of the Zhao reference is mechanisms for scheduling a time of transfer of media objects in order [to] optimize efficient bandwidth usage (see pp. 13-14). If in fact media objects were sent immediately, Zhao would not accomplish usage resource optimization.”¹⁴ Applicants respectfully disagree with such an assertion. As explained in Zhao in the Abstract, Zhao’s system is directed to media distribution by streaming, and the goal of Zhao is the maximizing of bandwidth efficiency, and not transmitting data on a time at which an ordered media object is available. Nowhere Zhao teaches or suggest transmitting data on a time at which an

¹² See the outstanding Office Action at page 3, lines 1-3.

¹³ Source: The Free On-line Dictionary of Computing, © 1993-2005 Denis Howe

¹⁴ See the outstanding Office Action at page 2, lines 15-18.

ordered media object is available by the center to the communications terminal, as recited in Applicants' Claim 1, as next explained.

Zhao's system is concerned with an optimal transmission schedule of media elements, once the transmission has started at a time $t=0$.¹⁵ Zhao thereby can accomplish resource optimization, and still starts the streaming immediately, and not "on a time at which an ordered media object is available by the center," as claimed.

Zhao's method and system is concerned with establishing multiplexing schedules for continuous streams with multiple media data elements. Each data element has a deadline $t(i)$ representing its scheduled playback time, clearly indicated as being "Scheduling Constraints."¹⁶ To avoid starvation at the receiver, the media data elements *must arrive* at the receiver before the deadline $t(i)$. As shown in Zhao's Figures 3a-b, 4a-b and 5a-b, the lower bound curve $L(t)$ defines the minimum cumulative amount of data that should be received by time t .

On the other hand, to avoid a buffer overflow at Zhao's receiver side, an upper bound curve $U(t)$ defines the maximum amount of data that can be delivered by time t . A transmission schedule is valid only if the transmission curve lies above $L(t)$ and below $U(t)$.¹⁷ Accordingly, Zhao's system is directed to *sender specific* transmission schedules for transmitting individual data elements of a data stream from a sender to one or more receivers, to thereby respect the deadlines of the individual data elements, as explained above. Zhao's time schedules itself, however, are never transmitted to the receiver.

Accordingly, Zhao also clearly fails to teach or suggest that *a time of transmitting data* is determined by the center with regards to optimal usage of resources used for a

¹⁵ See Zhao at page 15, paragraph 2.3, and in Figures 5a-b.

¹⁶ See Zhao at page 14, paragraph 2.1, lines 10-20.

¹⁷ See Zhao at pages 14-15, paragraph 2.1, starting at line 18.

transmission of ordered media objects, and also fail to teach or suggest that the *communications terminal automatically contacts the center at the time*.

Therefore, even if the combination of Downs and Zhao is assumed to be proper, the combination fails to teach every element of the claimed invention. Accordingly, Applicants respectfully traverse, and request reconsideration of, this rejection based on these patents.¹⁸

Should the Examiner continue to disagree with the above distinctions, Applicants respectfully request that the Examiner provide an explanation via Advisory Action pursuant to M.P.E.P. §714.13 specifically rebutting the points raised herein for purposes of facilitating the appeal process.

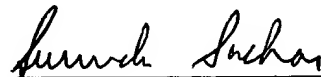
Please note in accordance with the discussion herein, should the rejections in the Official Action of April 7, 2006 be maintained, Applicants intend to request a Pre-Brief Appeal Conference in accordance with the pilot program outlined in the Official Gazette Notice of July 12, 2005.

¹⁸ See MPEP 2142 stating, as one of the three "basic criteria [that] must be met" in order to establish a *prima facie* case of obviousness, that "the prior art reference (or references when combined) must teach or suggest all the claim limitations," (emphasis added). See also MPEP 2143.03: "All words in a claim must be considered in judging the patentability of that claim against the prior art."

Consequently, in view of the present Request for Reconsideration, no further issues are believed to be outstanding in the present application, and the present application is believed to be in condition for formal Allowance. A Notice of Allowance for Claims 1-22 is earnestly solicited.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



Customer Number

22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 06/04)

GJM/SNS/NPS/

Gregory J. Maier
Registration No. 25,599
Surinder Sachar
Registration No. 34,423
Attorneys of Record

I:\ATTY\NS\009258\216597US\216597US-AM4-DRAFT.DOC